

1 DAVID CHIU, State Bar #189542
City Attorney
2 YVONNE R. MERE, State Bar #173594
Chief Deputy City Attorney
3 SARA J. EISENBERG, State Bar #269303
Chief of Complex & Affirmative Litigation
4 OWEN J. CLEMENTS, State Bar #141805
JAIME M. HULING DELAYE, State Bar #270784
5 JOHN H. GEORGE, State Bar #292332
Deputy City Attorneys
6 Fox Plaza
1390 Market Street, Sixth Floor
7 San Francisco, CA 94102
Telephone: 415/554-3957
8 jaime.hulingdelaye@sfcityatty.org

9 *Attorneys for Plaintiff The People of the State of California,*
10 *acting by and through San Francisco City Attorney David Chiu*

11 [Additional counsel appear on signature page.]

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 THE CITY AND COUNTY OF SAN)	Case No. 3:18-cv-07591-CRB
FRANCISCO, CALIFORNIA and THE)	
15 PEOPLE OF THE STATE OF CALIFORNIA,)	JOINT STATEMENT REGARDING
Acting by and through San Francisco City)	RECORDING TRIAL
Attorney DAVID CHIU,)	
16)	
Plaintiffs,)	
17)	
vs.)	
18)	
PURDUE PHARMA L.P., et al.,)	
19)	
Defendants.)	
20)	

1 On February 1, 2022 the Court issued an Order Re: Trial Protocols and Deadlines. Dkt.
2 No. 1004. The Court ordered the parties to submit a follow-up joint statement regarding
3 livestreaming the proceedings. The parties agree on all issues except recording the content
4 transmitted via the livestream. They hereby submit this joint statement on that issue. Each side's
5 proposed language (should they prevail) is included as an option for the Court to select in the
6 contemporaneously filed stipulation and order.

7
8 **I. PLAINTIFF'S PROPOSAL**

9 The Court should be able to, on a case by case basis, after considering the individual
10 circumstances of a witness at issue, authorize the livestream vendor to record a witness's testimony
11 for potential use in other proceedings. Cases are transferred to multidistrict litigation "for the
12 convenience of parties and witnesses and [to] promote the just and efficient conduct of such
13 actions." 28 U.S.C. § 1407. These principals are particularly important in bellwether proceedings,
14 which serve to guide resolution of disputes across an MDL. Recording portions of the CT4 trial can
15 facilitate these objectives where witness availability is an issue, and particularly where it disparately
16 impacts one party. Plaintiff's proposal keeps the recording confidential and sequestered—unless
17 and until another judge admits it. The balance of hardships favors this approach. A decision not to
18 record has permanent effect, fully foreclosing any opportunity to view CT4 testimony in any other
19 proceeding. But creating a recording has no cost, since cameras will already be present for
20 livestreaming, and causes no harm of any kind. Defendants' concerns arise only once a recording
21 is used in particular (hypothetical) settings. Where those concerns are valid, judges overseeing
22 other proceedings will not admit the recordings. Some judges may see benefit in using the recording
23 for only one witness in an extraordinary circumstance, or never at all. But where its use could
24 someday benefit the administration of justice, it can only be helpful to make that option available
25 to judges in the many upcoming and future opioid proceedings.

II. DEFENDANTS' PROPOSAL

Defendants oppose the People's request to "authorize the livestream vendor to record a witness's testimony for potential use in other proceeding." Under Civil Local Rule 77-3, "video-recording in the courtroom or its environs in connection with any judicial proceeding is prohibited" unless authorized by the District Judge "for ceremonial purposes, or for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit or the Judicial Conference of the United States." The People have not pointed to any ceremonial purpose or any authorized pilot or other project that necessitates such a recording over Defendants' objection. Recording "for potential use in other proceedings," even if considered on a case by case basis, is not permitted under Civil Local Rule 77-3. *See Hollingsworth v. Perry*, 558 U.S. 183, 192 (2010) (staying broadcasting where Civil Local Rule 77-3 did not permit it and the district court's attempt to amend the rule was not valid). That this is an MDL bellwether trial does not justify a deviation from the local rules. *See id.* at 199 (rejecting the court's attempt "to treat this case differently from other trials in the district").

Moreover, the People's intent to play the recorded witness examinations at subsequent trials goes against the Federal Rules' requirement that "witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise." Fed. R. Civ. P. 43(a). The People have not attempted to justify the use of any witness's trial testimony in any future trial in which the People would not be a participant and there is no guarantee that the same defendants would be involved. Likewise, the People have not explained why any particular witness would be unavailable to testify live in a subsequent trial. Nor have the People explained why the transcript of a witness's trial testimony would fail to adequately preserve that witness's testimony for any future cases.

Defendants urge this Court to adopt their proposal regarding recording, which mirrors that used in the livestream orders entered in prior case tracks—also bellwethers.. *See, e.g., In re Nat'l Prescription Opiate Litig.*, 17-md-2804, Dkt. 3951 ("Recordings of any kind, including audio recordings, visual recordings and still photographs of court proceedings are strictly prohibited.").

DATED: February 18, 2022

Respectfully Submitted,

/s/ Mark P. Chalos

MARK P. CHALOS

LIEFF, CABRASER, HEIMANN
& BERNSTEIN, LLP
ELIZABETH J. CABRASER
RICHARD M. HEIMANN
PAULINA DO AMARAL
KEVIN R. BUDNER
MICHAEL LEVIN-GESUNDHEIT
MARK P. CHALOS
JACOB H. POLIN
MIRIAM E. MARKS
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415/956-1000
415/956-1008 (fax)
ecabraser@lchb.com
rheimann@lchb.com
pdoamaral@lchb.com
kbudner@lchb.com
mlevin@lchb.com
mchalos@lchb.com

DAVID CHIU
City Attorney
YVONNE R. MERE
SARA J. EISENBERG
OWEN J. CLEMENTS
JAIME M. HULING DELAYE
JOHN H. GEORGE
Deputy City Attorneys
Fox Plaza
1390 Market Street, Sixth Floor
San Francisco, CA 94102
Telephone: 415/554-3957
jaime.hulingdelaye@sfcityatty.org

ROBBINS GELLER RUDMAN
& DOWD LLP
AELISH M. BAIG
TAEVA C. SHEFLER
HADIYA K. DESHMUKH
Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (fax)
aelishb@rgrdlaw.com
tshefler@rgrdlaw.com
hdeshmukh@rgrdlaw.com

PAUL J. GELLER
MARK J. DEARMAN
DOROTHY P. ANTULLIS
NICOLLE B. BRITO
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)
pgeller@rgrdlaw.com
mdearman@rgrdlaw.com
dantullis@rgrdlaw.com
nbrito@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
X. JAY ALVAREZ
THOMAS E. EGLER
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
jaya@rgrdlaw.com
tome@rgrdlaw.com

RENNE PUBLIC LAW GROUP
LOUISE RENNE
350 Sansome Street, Suite 300
San Francisco, CA 94104
Telephone: 415/848-7240
415/848-7230 (fax)
lrenne@publiclawgroup.com

1
2 ANDRUS ANDERSON LLP
3 JENNIE LEE ANDERSON
4 AUDREY SIEGEL
5 155 Montgomery Street, Suite 900
6 San Francisco, CA 94104
7 Telephone: 415/986-1400
8 415/986-1474 (fax)
9 jennie@andrusanderson.com
10 audrey.siegel@andrusanderson.com

11 SANFORD HEISLER SHARP, LLP
12 KEVIN SHARP
13 611 Commerce Street, Suite 3100
14 Nashville, TN 37203
15 Telephone: 615/434-7000
16 615/434-7020 (fax)
17 ksharp@sanfordheisler.com

18 SANFORD HEISLER SHARP, LLP
19 EDWARD CHAPIN
20 655 West Broadway, Suite 1700
21 San Diego, CA 92101
22 Telephone: 619/577-4253
23 619/577-4250 (fax)
24 echapin2@sanfordheisler.com

25 CASEY GERRY SCHENK FRANCAVILLA
26 BLATT & PENFIELD LLP
27 DAVID S. CASEY, JR.
28 GAYLE M. BLATT
ALYSSA WILLIAMS
110 Laurel Street
San Diego, CA 92101-1486
Telephone: 619/238-1811
619/544-9232 (fax)
dcasey@cglaw.com
gmb@cglaw.com
awilliams@cglaw.com

WEITZ & LUXENBERG P.C.
ELLEN RELKIN
700 Broadway
New York, NY 10003
Telephone: 212/558-5500
212/344-5461 (fax)
erelkin@weitzlux.com

WEITZ & LUXENBERG P.C.
MELINDA DAVIS NOKES
1880 Century Park East
Los Angeles, CA 90067
Telephone: 310/247-0921
310/786-9927 (fax)
mnokes@weitzlux.com

WEITZ & LUXENBERG P.C.
 PAUL F. NOVAK
 TIFFANY R. ELLIS
 3011 W. Grand Blvd, 24th Floor
 Detroit, MI 48202
 Telephone: 313/800-4170
 646/293-7960 (fax)
 pnovak@weitzlux.com
 tellis@weitzlux.com

*Attorneys for Plaintiff The People of the State of
 California, acting by and through San Francisco
 City Attorney David Chiu*

DATED: February 18, 2022

Respectfully submitted,

Amy L. Van Gelder
 Richard Bernardo (*pro hac vice*)
 SKADDEN, ARPS, SLATE,
 MEAGHER & FLOM LLP
 One Manhattan West
 New York, NY 10001
 Telephone: (212) 735-3000
 richard.bernardo@skadden.com

Amy L. Van Gelder (*pro hac vice*)
 SKADDEN, ARPS, SLATE,
 MEAGHER & FLOM LLP
 155 North Wacker Drive, Suite 2700
 Chicago, IL 60606
 Telephone: (312) 407-0903
 amy.vangelder@skadden.com

Padraic Foran (SBN 268278)
 Moez M. Kaba (SBN 257456)
 Michael K. Acquah (SBN 313955)
 mkaba@hueston.com
 pforan@hueston.com
 macquah@hueston.com
 HUESTON HENNIGAN LLP
 523 West 6th Street, Suite 400
 Los Angeles, CA 90014
 Telephone: (213) 788-4340
 Facsimile: (888) 775-0898

John C. Hueston (SBN 164921)
 HUESTON HENNIGAN LLP
 620 Newport Center Dr., Suite 1300
 Newport Beach, CA 92660
 Telephone: (949) 229-8640

*Attorneys for Defendants Endo
 Pharmaceuticals Inc., Endo Health
 Solutions Inc., Par Pharmaceutical, Inc.,*

Collie F. James
 Collie F. James, IV (S.B. #192318)
 MORGAN, LEWIS & BOCKIUS LLP
 600 Anton Blvd., Suite 1800
 Costa Mesa, CA 92626
 Telephone: (714) 830-0600
 collie.james@morganlewis.com

Brent A. Hawkins (S.B. # 314266)
 Zachary Hill (S.B. #275886)
 MORGAN, LEWIS & BOCKIUS LLP
 One Market, Spear Street Tower
 San Francisco, CA 94105-1596
 Telephone: (415) 442-1000
 brent.hawkins@morganlewis.com
 zachary.hill@morganlewis.com

Wendy West Feinstein (*pro hac vice*)
 Katherine A. Vaky (*pro hac vice*)
 MORGAN, LEWIS & BOCKIUS LLP
 One Oxford Centre, 32nd Floor
 Pittsburgh, PA 15219-6401
 Telephone: (412) 560-7455
 wendy.feinstein@morganlewis.com
 katherine.vaky@morganlewis.com

*Attorneys for Defendants
 Cephalon, Inc.; Teva Pharmaceuticals
 USA, Inc.; specially appearing Teva
 Pharmaceutical Industries Ltd.; Watson
 Laboratories, Inc.; Actavis LLC, Actavis
 Pharma, Inc., f/k/a Watson Pharma, Inc.;
 Actavis Elizabeth LLC; Actavis Mid Atlantic
 LLC; Warner Chilcott Company, LLC;
 Actavis South Atlantic LLC; Actavis Totowa
 LLC; Actavis Kadian LLC; Actavis
 Laboratories UT, Inc., f/k/a/ Watson
 Laboratories, Inc.-Salt Lake City; and*

*Endo International plc, and Par
Pharmaceutical Companies, Inc.*

*Actavis Laboratories FL, Inc., f/k/a Watson
Laboratories, Inc.-Florida*

Nicole K. Smith

Nicole K. Smith (S.B. #330384)
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, CA 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500
nicole.k.smith@kirkland.com

James F. Hurst, P.C. (pro hac vice)
Hariklia Karis, P.C. (pro hac vice)
Zachary A. Ciullo (pro hac vice)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
james.hurst@kirkland.com
hkarris@kirkland.com
zac.ciullo@kirkland.com

*Attorneys for Defendants
Allergan Finance, LLC, Allergan Sales,
LLC and Allergan USA, Inc. and Specially
Appearing Defendant Allergan plc*

Katherine M. Swift

Brian C. Swanson (pro hac vice)
brian.swanson@bartlitbeck.com
Katherine M. Swift (pro hac vice)
kate.swift@bartlitbeck.com
BARTLIT BECK LLP
54 West Hubbard Street
Chicago, IL 60654
Telephone: 312.494.4400
Facsimile: 312.494.4440

Alex J. Harris (pro hac vice)
alex.harris@bartlitbeck.com
Gabriel J. Levin (SBN 330163)
gabe.levin@bartlitbeck.com
BARTLIT BECK LLP
1801 Wewatta Street, Suite 1200
Denver, CO 80202
Telephone: 303.592.3100
Facsimile: 303.592.3140

Charles J. Stevens (SBN 106981)
cstevens@gibsondunn.com
Joshua D. Dick (SBN 268853)
jdick@gibsondunn.com
Kelsey J. Helland (SBN 298888)
khelland@gibsondunn.com
GIBSON DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
Telephone: 415.393.8200
Facsimile: 415.393.8306

*Attorneys for Defendant
Walgreen Co.*

Katy E. Koski

Alan R. Ouellette (CA Bar No. 272745)
FOLEY & LARDNER LLP
555 California Street, Suite 1700
San Francisco, CA 94104-1520
Telephone: (415) 434-4484
Facsimile: (415) 434-4507
aouellette@foley.com

James W. Matthews (*pro hac vice*)
Ana M. Francisco (*pro hac vice*)
Katy E. Koski (*pro hac vice*)
FOLEY & LARDNER LLP
111 Huntington Avenue
Boston, MA 02199-7610
Telephone: (617) 342-4000
Facsimile: (617) 342-4000
jmatthews@foley.com
francisco@foley.com
kkoski@foley.com

*Attorneys for Defendant
Anda, Inc.*

ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from the above signatories.

DATED: February 18, 2022

/s/ Mark P. Chalos
MARK P. CHALOS

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on February 18, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Mark P. Chalos

MARK P. CHALOS

LIEFF, CABRASER, HEIMANN
& BERNSTEIN, LLP

MARK P. CHALOS

275 Battery Street, 29th Floor

San Francisco, CA 94111-3339

Telephone: 415/956-1000

415/956-1008 (fax)

mchalos@lchb.com